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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/549,257	09/12/2005	Gilles Elliot	TFR0210	1650
27305 7590 02/18/2010 HOWARD & HOWARD ATTORNEYS PLLC 450 West Fourth Street Royal Oak, MI 48067				
EXAMINER FORD, JOHN K				
ART UNIT		PAPER NUMBER		
3744				
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02/18/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/549,257

Applicant(s)

ELLIOT ET AL.

Examiner

John K. Ford

Art Unit

3744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 November 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) 3, 9, 13-21, 23-27 and 29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-8, 10-12, 22 and 28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ ~~Notice of Informal Patent Application~~
- 6) ☐ Other: _____

Applicant's election of Species I, Figures 1-7, with claims 1, 2, 4-8, 10-13, 22 and 28 identified, without traverse, is acknowledged. The examiner agrees with applicant's listing of claims except for claim 13. Claim 13 is not deemed readable on the elected species because it is in conflict with what is shown in Figures 1-7 and correctly claimed in claim 12 with respect to the elected species (i.e. the mixing flaps in elected Figures 1-7 are located where they are claimed in claim 12, not claim 13). Accordingly claim 13 is withdrawn here by the examiner. An action on the merits follows as to claims 1, 2, 4-8, 10-12, 22 and 28.

In response to the examiner's question to applicant as to whether the combination of a motor vehicle and an air conditioner was being claimed or just the air conditioner, *per se*, counsel (June 8, 2009 response, at page 11/14) states that a "vehicle" is not part of the claimed combination. The examination proceeds on that basis. All references in the claims to vehicle structure are not extended patentable weight because according to applicant's representations they are not structural limitations on the claims. Where mentioned in the claims they are interpreted to be simply matters of an intended use and are not part of the claimed combination. Apparently the same claim interpretation is being applied in the Opposition as is evident when reading the rejections put forth by the Opposer (i.e. the vehicle is not deemed part of the claimed combination).

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4, 5, 6, 7, 8, 11-12, 22 and 28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 4, it is unclear which direction the "longitudinal axis" extends because no particular direction is specified. In claim 5, the word "turbine" to mean fan or blower is highly unconventional. Normally a "turbine" is used to denote an element that produces power when gas is forced through it such as the turbine in a gas turbine engine. In claim 6, the "bottom to top" limitation, claim 7 the "above" orientation, claim 8 the "inclined" with respect to the "horizontal" limitation, and in claims 11-12 the "right and left side" limitation are each vague because each implies an orientation relative to a vehicle or to the earth's gravitational field which is not part of the respective claims. For purposes of the rejections that follow, the casing of the references can be oriented in space in any manner and at least one of those orientations will satisfy the respective claims 6, 7, 8 and 11-12. Claims 22 and 28 are identical (this was noted in the Opposition, as well). One of them must be cancelled or amended in such a way that they are no longer identical.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Applicant's partial translation of the Opposition filed by Behr in the EPO has been received and is appreciated. Applicant has also stated, without any elaboration as to how, that claim 1 here is "different" from "any" independent claim in EP 1601543. As much as the examiner appreciates the translation of the Opposition, did it not occur to applicant that having the claims that correspond to Opposition would be a necessary prerequisite to meaningfully understanding it?

It is necessary to know in what manner the claims of this application are similar to and different from corresponding claims (subject to the Opposition) in EP 1601543. Simply pointing out that the claims are "different", without any explanation as to how, is not productive in terms of advancing the prosecution. In response to this action, applicant is required to provide the issued claims (i.e. those being opposed by Behr), in English, from EP 1601543 **or** to explain how each of the issued claims being opposed by Behr in EP 1601543 differs from each of the corresponding claims in this application.

Even without that information, the examiner, based on a careful reading of the Behr Opposition, has determined that the claims issued by the EPO (and opposed by Behr) in all probability cannot be significantly different from the claims here, notwithstanding applicant's remarks to the contrary.

The following rejections all make reference to the Behr opposition in the EPO and the translation of that opposition is incorporated here by reference to explain each of these rejections.

Rejection 1

Claims 1, 4 and 8 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over D11 (FR 2637548).

To explain this rejection, the relevant section of the 12 page translation of "Annex 1" of the Behr opposition in the EPO is incorporated here by reference. All references made to references prefaced by the letter "D" (e.g. D1, D2, D3 D12) correspond to the nomenclature set forth in the aforementioned opposition.

Rejection 2

Claims 1, 4, 8, 22 and 28 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over D10 (EP 0458705).

To explain this rejection, the relevant section of the 12 page translation of "Annex 1" of the Behr opposition in the EPO is incorporated here by reference. All references made to references prefaced by the letter "D" (e.g. D1, D2, D3 D12) correspond to the nomenclature set forth in the aforementioned opposition.

Rejection 3

Claims 1, 4 and 8 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over D3 (FR 2735426).

To explain this rejection, the relevant section of the 12 page translation of "Annex 1" of the Behr opposition in the EPO is incorporated here by reference. All references made to references prefaced by the letter "D" (e.g. D1, D2, D3 D12) correspond to the nomenclature set forth in the aforementioned opposition.

Rejection 4

Claims 1, 4 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over D5 (DE 10042683) in view of D7 (DE 19626441) or D12 (EP 0357801).

To explain this rejection, the relevant section of the 12 page translation of "Annex 1" of the Behr opposition in the EPO is incorporated here by reference. All references made to references prefaced by the letter "D" (e.g. D1, D2, D3 D12) correspond to the nomenclature set forth in the aforementioned opposition.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over any one of the prior rejections of as applied to claim 1 above, and further in view of D7 (Figs. 1 and 6), D11 (Fig. 2, page 5, lines 1-2) or D12 (Fig. 6).

To have used two laterally arranged distribution modules as taught by any one of D7, D11 or D12 in any of the prior art used in rejections 1, 2, 3 or 4 above would have been obvious to one of ordinary skill in the art to improve occupant comfort by conditioning both sides of the vehicle compartment.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over any one of the prior rejections of as applied to claim 1 above, and further in view of any one of D1 (element 16), D2 (element 24), D4 (element 28), D5 (element 2), D6 (element (14) or D10 (element 1) and switching means are disclosed in D5 (at 11) or in D6 (at 20, 22).

To have used a ventilation module of with a construction as disclosed in any one of D1 (element 16), D2 (element 24), D4 (element 28), D5 (element 2), D6 (element (14) or D10 (element 1) and switching means are disclosed in D5 (at 11) or in D6 (at 20, 22) in any of the prior art used in rejections 1, 2, 3 or 4 above would have been obvious to one of ordinary skill in the art to improve occupant comfort by forcefully impelling the air and allowing both recirculated and fresh air to flow.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over any one of the prior rejections of as applied to claim 1 above, and further in view of D3 page 6, lines 18-21 and D12, Figures 2 and 4.

To have oriented the claimed elements in the heating module in the manner disclosed by D3 page 6, lines 18-21 and D12, Figures 2 and 4 in any of the prior art used in rejections 1, 2, 3 or 4 above would have been obvious to one of ordinary skill in the art to advantageously diminish the amount of lateral space taken up by the heating module.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over any one of the prior rejections of as applied to claim 1 above, and further in view of D9.

To have placed an electric heater next to and parallel to the coolant heater in any of the prior art used in rejections 1, 2, 3 or 4 above would have been obvious to one of ordinary skill in the art to advantageously heat the compartment faster during very cold weather.

Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over any one of the prior rejections of as applied to claim 1 above, and further in view of D8 or D6 or JP 06-183248.

To have used an adjusting means as taught by D8 or D6 or JP '248 in any of the prior art used in rejections 1, 2, 3 or 4 above would have been obvious to one of ordinary skill in the art to advantageously allow the occupants to separately select a temperature air suitable to each of them at the respective discharge port into the compartment.

Claims 22 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over any one of the prior rejections of as applied to claim 1 above, and further in view of D10 (Figure 2).

As stated in the opposition, these are all **conventional** discharge locations/apertures and would have been obvious to have used in prior art used in rejections 1, 2, 3 or 4 above (if not already disclosed there) to distribute air to where the occupants desire it.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John K. Ford whose telephone number is 571-272-4911. The examiner can normally be reached on Mon.-Fri. 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl Tyler can be reached on 571-272-4834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/John K. Ford/
Primary Examiner, Art Unit 3744